

# NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN

## **SESTA-FOSTA: Moving Forward with a New Law to Combat Online Child Sex Trafficking**



# Background: National Center for Missing & Exploited Children

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As the congressionally designated national clearinghouse on issues relating to missing and exploited children, NCMEC has responded to tens of thousands of child sex trafficking reports.

- On average, NCMEC responds to **more than 10,000** reports of child sex trafficking each year.
- Over the past 5 years, **81%** of our child sex trafficking reports relate to trafficking a child online.
- **74%** of our child sex trafficking reports received from members of the public relate to ads on Backpage.com.



# Background: Problem of Impunity for Online Facilitators of Child Sex Trafficking

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- Unprecedented growth of child sex trafficking online over past decade.
- Traditional measures to combat the crime: state legislative efforts, increased arrests/prosecutions of traffickers, and non-profit awareness campaigns/programming failed to blunt growth of the crime.
- It became clear that legal loophole protected facilitators of online child sex trafficking, which immunized them from legal liability.
- Legal impunity + potential to earn high profits fueled growth of online marketplace for child sex trafficking.



# Impunity for Online Facilitators Reaches Tipping Point

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Three factors coalesced over the past 3 years to reach tipping point:

- 2015: Senate Permanent Subcommittee of Investigations launched online sex trafficking investigation, quickly focusing on Backpage and legal loophole enabling Backpage's business practices.
- 2017: Release of "I Am Jane Doe" documentary told personal stories of survivors and their legal/legislative battles to hold online facilitators of sex trafficking accountable.
- 2010-2018: Court opinions repeatedly held Communications Decency Act (CDA) prevented legal liability for online facilitators of child sex trafficking, such as Backpage



# Backpage Legal Actions: 2010-Present

*As of May 22, 2018*



1 federal civil case dismissed in BP's favor; 2 pending state civil cases; 1 state civil case settled

1 pending state civil case

1 completed Senate investigation; 2 federal civil cases decided against Backpage

1 pending federal civil case; 1 pending state civil case

1 federal civil case dismissed in BP's favor; 1 pending federal civil case filed against state AG; 1 pending civil investigative demand (CID)

1 pending federal criminal case; 1 jointly dismissed federal civil case (insurance); 1 federal civil case voluntarily dismissed in BP's favor

1 federal civil case dismissed in BP's favor; 1 pending federal civil case; 1 pending federal civil case filed against AG (under seal)

1 federal civil case dismissed in BP's favor

1 federal civil case dismissed in BP's favor

1 state AG criminal case dismissed in BP's favor; 1 pending state AG criminal case; 1 pending state civil case

1 pending state civil case

5 pending state civil cases

1 pending federal civil case



# Court Decisions Push Congress Towards Federal Legislation

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Courts' inability to balance CDA protections for online entities with protections for victims under federal trafficking statute made clear to Congress that legislative fix was needed.

“[T]he Court understands the importance and urgency in waging war against sexual exploitation. Regardless of the grave potential for harm that may result in the exercise of this article of faith, Congress has precluded liability for online publishers for the action of publishing third party speech and thus provided for both a foreclosure from prosecution and an affirmative defense at trial. **Congress has spoken on this matter and it is for Congress, not this Court, to revisit.**” (*Sacramento Superior Court dismissing pimping criminal charges against Backpage, 12-9-16*)

“Congress did not sound an uncertain trumpet when it enacted the CDA, and it chose to grant broad protections to internet publishers. Showing that a website operates through a meretricious business model is not enough to strip away those protections. If the evils that the appellants have identified are deemed to outweigh the First Amendment values that drive the CDA, the remedy is through legislation, not through litigation.” (*U.S. District Court of Appeals for the First Circuit, dismissing lawsuit by child sex trafficking victims against Backpage, 3-14-16*)



## **Congress Acts:**

### **Introduction of FOSTA (H.R. 1865) and SESTA (S. 1693)**

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- Allow States and Victims to Fight Online Sex Trafficking Act of 2017 (FOSTA) introduced in House on April 3, 2017

Sought to amend CDA and federal trafficking statute to clarify rights of trafficking victims against online facilitators. Contained broad language that garnered early criticism/concern. Amendments curtailed CDA/trafficking statute amendments and created new crime to criminalize intentional online facilitation of prostitution.

- Stop Enabling Sex Traffickers Act (SESTA) introduced in Senate on August 1, 2017

Sought to more narrowly amend CDA and federal trafficking statute to clarify rights of trafficking victims against online facilitators. After slight amendments, bill garnered wider tech company support and passed Senate committee.



## **FOSTA and SESTA: Reaching a Compromise on the Hill**

With FOSTA and SESTA ready for floor votes, House and Senate leadership and co-sponsors reached a compromise to combine the 2 bills to create powerful package of legal remedies for survivors.

Feb. 27, 2018: Compromise FOSTA-SESTA passed House (388-25)

March 21, 2018: Compromise SESTA-FOSTA passed Senate (97-2)

April 11, 2018: President signed SESTA-FOSTA into law





## **SESTA-FOSTA: What Does the New Law Provide?**

New law creates 1 new federal statute & amends 3 federal statutes.

New Federal Statute: Promotion or Facilitation of Prostitution and Reckless Disregard of Sex Trafficking (18 U.S.C. 2421A)

Creates criminal liability for anyone using a website with intent to promote/facilitate prostitution of another person. Aggravated offense arises when promoting prostitution of over 5 persons or acting in reckless disregard that conduct violates federal trafficking statute.

Affirmative defense exists in some circumstances where defendant can prove prostitution is legal in jurisdiction where promotion or facilitation was targeted.



## **SESTA-FOSTA: What Does the New Law Provide? (continued)**

### **Revised Federal Statute #1: CDA (47 U.S.C. 230)**

Adds new exception from CDA immunity for sex trafficking laws:

- CDA does not limit civil claims brought by survivors of sex trafficking under federal sex trafficking statute (18 U.S.C. 1591)
- CDA does not limit state criminal charges where conduct would violate federal sex trafficking statute (18 U.S.C. 1591)
- CDA does not limit state criminal charges where conduct would violate intentional promotion of prostitution using website (18 U.S.C. 2421A)



## **SESTA-FOSTA: What Does the New Law Provide? (continued)**

### **Revised Federal Statute #2: Sex Trafficking of Children or by Force, Fraud, or Coercion (18 U.S.C. 1591)**

Statute provided that trafficking includes person that knowingly “benefits, financially or by receiving anything of value, from participation in a venture” to traffic child or adult with fraud, force, or coercion.

SESTA-FOSTA defines participation in a venture for the first time as: “knowingly assisting, supporting, or facilitating” the recruiting, enticing, harboring, transporting, providing, obtaining, advertising, maintaining, patronizing, or soliciting of a person to engage in a commercial sex act.



## **SESTA-FOSTA: What Does the New Law Provide? (continued)**

### **Revised Federal Statute #3: Civil Remedy (18 U.S.C. 1595)**

Statute provided for private right of action for survivors to work with private attorney to bring civil lawsuit against anyone who traffics them under the federal sex trafficking statute.

SESTA-FOSTA expands civil remedy to enable state attorneys general whose residents have been threatened or adversely affected by violations of the federal sex trafficking statute to bring civil actions on behalf of their residents in federal court.



# What has Happened Online Since Enactment of SESTA-FOSTA?

5/23/2018

[craigslist](#) | [about](#) | [FOSTA](#)

CL about > FOSTA

US Congress just passed HR 1865, "FOSTA", seeking to subject websites to criminal and civil liability when third parties (users) misuse online personals unlawfully.

Any tool or service can be misused. We can't take such risk without jeopardizing all our other services, so we are regretfully taking craigslist personals offline. Hopefully we can bring them back some day.

To the millions of spouses, partners, and couples who met through craigslist, we wish you every happiness!

# What has Happened Online Since Enactment of SESTA-FOSTA?

pounced.org (/)

🔑 [Login \(login\)](#)

Personals

Statistics

users

*total 87075*

*online 3*

*guest 1*

personals

*total 18646*

*public 10623*

## Pounced.org is shutting down

We've setup a version of the site so that you can get your information off the site. On July 1st, 2018 we will cease operations. While we've enjoyed serving the community for so long we've decided the additional challenges of operating under the new FOSTA legislation, along with other concerns, no longer meets our goals for operating pounced.org.

# What has Happened Online Since Enactment of SESTA-FOSTA?

5/23/2018

Access denied | www.theeroticreview.com used Cloudflare to restrict access

Please enable cookies.

**Error 1009 Ray ID: 41f7ca74adeb56f3 • 2018-05-23 13:15:21 UTC**

**Access denied**

**What happened?**

The owner of this website (www.theeroticreview.com) has banned the country or region your IP address is in (US) from accessing this website.

Cloudflare Ray ID: 41f7ca74adeb56f3 • Your IP: 50.202.82.5 • Performance & security by Cloudflare



# What has Happened Online Since Enactment of SESTA-FOSTA?

5/23/2018

men4rentnow.com



**This site can't be reached**

The webpage at **<http://men4rentnow.com/>** might be temporarily down or it may have moved permanently to a new web address.

Search Google for men4rentnow

ERR\_NAME\_RESOLUTION\_FAILED





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## **QUESTIONS & DISCUSSION**

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# Everyday Heroes Truck to benefit Truckers Against Trafficking



# Truckers are Truly Making a Difference

You helped us raise \$85,000 for  
Truckers Against Trafficking,  
and their campaign to train  
and educate more truck  
drivers to spot and report  
human trafficking.

## Thank You

**J&L**  
TRANSPORTATION



**INLAND**

Sales - Service - Parts





Hi Don,

I was just looking at our annual report again, specifically the page regarding the Everyday Heroes Truck and did a double take at the picture ... is the national hotline number really on there as 1-800-3737-888 instead of 1-888-3737-888?

I'm pretty 1-800-3737-888 is a number for a sex hotline. Shocking, but true. Can you check in with Mike and see if it's the wrong number? And if yes, would he be willing to fix it right away?

Thanks,  
Kendis







Phone



Dial

Call logs

Contacts

Favorites

Group

(800) 373-7888



Name ID: Human Trafficking Hotline

Home [8003737888](tel:8003737888)

1 QO

2 ABC

3 DEF

4 GHI

5 JKL

6 MNO

7 PQRS

8 TUV

9 WXYZ

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